

# Introduction to Justice Court Law

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## How will these judicial education courses work?

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What classes and why?

2

How do I keep track of where we are in the court system?



Why are certain classes taught first?

What kind of information will be covered in each class?

How do I find the information later?

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What if I want more in-depth information?

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## What to Watch For During Classes

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### Legal References!

- “Rule xx” refers to a Rule in the Texas Rules of Civil Procedure
- “Ch.” refers to a chapter in a Deskbook, or in a code of laws, such as the Property Code or Government Code
- “Sec.” or “§” means “Section”, referring to a section in a code
- “Art.” means article, which are what sections of the Code of Criminal Procedure are called
- Each code is broken into chapters, which are further broken into sections or articles
- For Deskbook references saying, for example “Chapter 4B” means Section B of Chapter 4.

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Who  
were  
you?

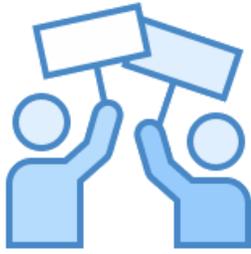


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Who are you now?

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Who are you  
not?

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What  
should  
be the  
most  
important  
trait of a  
court?



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# ***Fairness***

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What are the concepts?

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Due Process

Ex Parte communications

Access to Justice

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# Due Process

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An exercise of the powers of government in an orderly manner so that a person's individual rights are protected and laws are applied fairly.

- TJCTC legal terminology

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# Due Process in Courts:

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- Notice
- Opportunity to be heard
- Opportunity to confront witnesses

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# Where will you see due process?

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And what to do when it gets challenging?

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## Notice

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Automatically sending notice to parties when a hearing is set.



Hearing a case when only one party shows without checking that notices were sent.



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# Opportunity to be Heard

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You make sure to listen to both sides.

But can always control the courtroom by telling a party that you have heard all that you need to make a fair ruling.



Refusing to let a party speak



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# Opportunity to Confront Witnesses

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Allow a party to ask questions of the other side's witness



Refusing to let the defendant ask question of the ticketing officer because you trust law enforcement



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# Always Treat both Sides *Equally*

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## 'Ex Parte' Communication

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On one side only; done for, in behalf of, or on the application of, one party only; to discuss or transact business with one party in the absence of the opposite party to a case.

*Concept also applies to your clerk*

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## In simpler terms:

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Both sides should be present when a case is discussed

- With the Judge
- Even with a Clerk

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## When will you see this?

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- Grocery store/restaurants
- Phone calls asking for a favor
- At the window with your clerks

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# How to handle?

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- Inform them that if you hear any more, you may not be able to be the judge on the case
- Point them to the case filing procedure if they think they have a case

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# 'Access to Justice'

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- Ensure citizens can use the courts with ease
- Few barriers (indigency)
- Information is easy to find
- Resources are available

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## Example of Access to Justice

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### *Examination of Civil Rules*

The court must make the Rules of Civil Procedure and the Rules of Evidence available for examination, either in paper form or electronically, during the court's business hours

Texas Rules of Civil Procedure 500.3 (f)

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## Example of Access to Justice

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### *Statement of Inability to Afford Payment of Court Costs*

The court must make this statement (used if a party can't afford to pay to file or appeal a case) available to anyone without charging them or them needing to request it (more on this later!)

Texas Rules of Civil Procedure 502.3 (b)

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# Access to Justice: The Indigent Person

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## What does indigent person mean?

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Someone who cannot afford to file a case, pay a fine, or any other money due to the court

Means that they cannot afford to pay **at that point in time**

They may have huge medical bills

They may have just lost their jobs

They may be chronically poor

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## When will you see this in your court?

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When someone files a civil case

When someone files a civil appeal

When someone is ordered to pay criminal fines and costs

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## You must assess individuals needs and ability to pay

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This is critical to access to justice & how your courts handle these procedures will be monitored!

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What does 'ex parte'  
communication mean?  
Give an example!

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What kind of cases will you  
hear?

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## What kind of things will you see?

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Civil

Criminal

Administrative: tow hearings, dangerous dogs, occupational drivers license, etc.

Non-cases: magistration & inquests

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## Types of Cases

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Magistration & Inquests will get their own classes this week!

Admin cases vary by type – consult the Administrative Proceedings Deskbook for details!

Let's focus on Civil vs. Criminal now!

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## Civil Law – What?

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What is 'civil' law?

A disagreement – not following society's rules

Between people or entities (businesses)



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## Civil Law – Who?

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The 2 sides are called 'parties'

Plaintiff – files the lawsuit & claims something was done wrong

Defendant – person or business being sued

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## Civil Law – Why?

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- Physically hurting someone (car accident)
- Damaging property
- Breaking a contract (debt claim)
- Failing to pay rent (eviction)

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## Civil Law – How?

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A civil case only begins if:

One party – the Plaintiff – files a petition (a lawsuit)

Must pay a filing fee (unless indigent)

Much more on this in Stage 2!

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## Criminal Law – What?

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What is 'criminal' law? Breaking a law

Legislators or local governments set the law

Cases brought by citation (ticket) or prosecutor filing a complaint

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## Criminal Law – Who?

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The 2 sides are still called 'parties'

State of Texas (by a County or District attorney) – prosecutes the crime

Defendant – accused of the crime

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## Criminal Law – Why?

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- Speeding ticket
- Assault
- Public Intoxication

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## Role of the Court - Always

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### **Neutral**

*Processing the case only*

Always Impartial

Always Respectful

Always Dignified

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## Role of the Court - Civil Case

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- ❖ This is the area where you will have the most discretion
  - Civil cases are much more a judgment call and credibility issue
  - Remember these rules give much more discretion overall to the court – some of the most discretion in any court in the state!
- ❖ You will have to make difficult decisions that may involve people you know in the community
- ❖ Evictions can be particularly challenging

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## Role of the Court - Criminal Case

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- ❖ Not on the 'same side' as the prosecution
  - Need to keep this clear because they may work in your building and you will work with the same prosecutors.
  - Need to take off your peace officer hat – permanently.
- ❖ Must consider the indigent defendant carefully
- ❖ Apply required conditions in every case that calls for them

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# Cases in Your Court: Where & When?

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## Where & When?

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- Jurisdiction
- Venue
- Statute of Limitations

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# Jurisdiction vs Venue

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❖ Authority to hear a type of case

❖ 'Proper' geographic location to file legal action

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# Jurisdiction

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❖ Authority comes from statutes (legislature)

❖ Some **civil** guidance comes from Rules of Procedure (Supreme Court)

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## 'Statute of Limitations'

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The time limit established by law when a case must be prosecuted or a suit brought.

Based off the date when a criminal action is brought or the date when a civil wrong-doing took place

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## Jurisdiction - Civil

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What types of cases do you have authority to hear?



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# Jurisdiction - Civil

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“Jurisdiction” is the authority of the court to hear and decide a case.

Texas Rules of Civil Procedure 500.2(p)

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# Original Jurisdiction - Civil

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...The justice court has **original** jurisdiction of:

- Cases that do not have to be in district or county court
- Not asking for more than \$20,000 (not counting interest)
- Evictions

Government Code Sec. 27.031

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# No Jurisdiction – Civil

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A justice court **does not** have jurisdiction of:

- Divorce or child custody
- Slander or defamation of character
- Suit for title to land

Government Code Sec. 27.031

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# Dismissal for No Jurisdiction – Civil

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If your court does not have **jurisdiction**, you must dismiss the case, without anyone needing to bring up the issue

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# Where must the case be filed?

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## Venue

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## Venue - Civil

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...all lawsuits shall be brought in the county and precinct:  
where all or most of **the events for the lawsuit took place**  
where **the defendant lives or lived when the events happened**  
where the **contract or agreement** was supposed to be performed; or  
where plaintiff lives **only if defendant does not live in Texas or cannot be found**

If suing over an item, where **the item is located**

If suing a business, where the **defendant's principal office** is located

Civil Practice and Remedies Code Sec. 15.002.; Texas Rules of Civil Procedure Rule 502.4.(b)

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# Venue - Evictions

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Eviction cases must be filed in the **county and precinct where the property is located**

*If venue is improper in an eviction case, than jurisdiction is also improper*

*In other civil cases, your court doesn't lose jurisdiction just because venue is improper*

Civil Practice and Remedies Code Sec. 15.0115.

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# Venue – Access to Justice

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- You must make these venue rules and codes available for review during office hours for the public:
  - Civil Practice and Remedies Code Sec. 15.002.
  - Texas Rules of Civil Procedure RULE 502.4.(b)
- They can be online or printed out for examination during the court's business hours.

Texas Rules of Civil Procedure Rule 502.4(a)

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# What if the case needs to be moved?

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## Transfer Venue - Civil

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If venue is improper in a case, you continue with the case unless the issue is raised by a party by filing a “motion to transfer venue.”

(A “motion” is just when a party is asking the court to do something.)

Transfer of venue will be discussed in Stage 2 and is covered in Chapter 4D of the Civil Deskbook.

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# When must the case be filed?

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STATUTE OF LIMITATIONS

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## Statute of Limitations - Civil

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### **4 years:**

Debt claim cases

Civil Practice and Remedies Code Sec. 16.004.

Contracts (unless contract provides differently, with minimum allowed being 2 years)

Civil Practice and Remedies Code Sec. 16.051, 16.070

### **2 years:**

Personal injury or property damages (also called “torts”)

Eviction

Civil Practice and Remedies Code Sec. 16.003.

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# What does 'jurisdiction' mean?

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## Jurisdiction - Criminal

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What types of cases do you have authority to hear?



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# Jurisdiction – Criminal

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Offenses punishable by fine only (no jail time)

Includes offenses punishable by fine and required conditions (Fine-only Chapter 106, Alcoholic Beverage Code crimes)

*Similar to criminal jurisdiction of municipal courts*

Code of Criminal Procedure Art. 4.01 & Art. 4.11.

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# Where should the case be filed?

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Venue

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# Venue - Criminal

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... a misdemeanor case in justice court shall be 'tried' in the precinct:

- Where the crime was **committed**
- Where the **defendant/s live**
- In any precinct in the county if the state and defendant **agree in writing**
- **Harris County only:** in any precinct adjacent to the one where the crime occurred

Code of Criminal Procedure Art. 4.12.

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## What if the case needs to be moved?

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Motion to transfer venue

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# Transfer Venue - Criminal

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“The justices of the peace in each county shall, by majority vote, adopt local rules of administration regarding the transfer of a pending misdemeanor case from one precinct to a different precinct.”

Code of Criminal Procedure Art. 4.12.

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# Transfer Venue - Criminal

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Best Practice:

If a criminal defendant requests a transfer to the proper precinct – even if you do not have county rules established – you should go ahead and transfer the case

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# When must the case be filed?

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Statute of Limitations

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## Statute of Limitations - Criminal

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**2 years:**

Date of the misdemeanor offense

Code of Criminal Procedure Art. 12.02.

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# Conducting Court

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## Conducting Court

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Conducting trials

Representation of parties

Burden of proof

Differences in criminal and civil proceedings

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## Conducting Trials

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Please see the Trial Notebook for details, including how to “swear in” witnesses to put them under oath to tell the truth

Mock trials also coming up in Stage 3!

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## Who will represent parties in your court?

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Any party may represent themselves – in any case, in any court

Someone who doesn't have an attorney representing them is called a self-represented, or **pro se**, litigant

**Most** of your cases will be self-represented litigants in criminal and civil cases

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# What if a party is not self-represented?

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Criminal defendants:

- Only an attorney may represent
- The prosecutor will always be an attorney

Civil cases:

- Attorneys may represent clients
- A non-attorney agent may represent parties in eviction cases
- Parties may have 'assisted representation' from non-attorneys – not acting as an attorney – usually for language barriers or elderly parties

Texas Rules of Civil Procedure 500.4

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# Burden of Proof

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In each case, one party will have what is called the **burden of proof**. This means they have the responsibility to prove that the facts are in their favor

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# Burden of Proof - Criminal

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Everyone is presumed to be innocent

The State must prove each element of the criminal offense (who, what, where, and what they did) to be convicted

The offense must be proved **beyond a reasonable doubt**

Penal Code Sec. 2.01.

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# Burden of Proof - Civil

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- The plaintiff has the burden of proof
  - They do not have to prove their case beyond a reasonable doubt though
- The burden of proof is “by a **preponderance of the evidence**”
  - This means **more likely than not** the facts are what the plaintiff claims. Another description of this is that at least “50% +1” of the evidence favors the side of the plaintiff

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# Jury Trials

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## CIVIL

- Either party may request a jury trial, otherwise trial by judge (bench trial)
- \$22.00 non-refundable fee
- Not a government-driven process

## CRIMINAL

- All trials are by jury, unless waived in writing
- No fee to have a jury
- Entitled to protection from the government

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# Jury Trials

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## CIVIL

- Less 'rigid'
- Rule 500.6 allows you to ask questions, subpoena witnesses, and ensure the right outcome
- Rules of Evidence don't apply unless judge decides needed for fairness

## CRIMINAL

- Formal process
- The court may not ask questions or bring in a witness, only the parties/attorneys may do so
- Rules of Evidence always apply

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# Conflicts or Unavailability

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## Conflicts or Unavailability

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Recusal and Disqualification

Vacancy

Temporary Judge

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# Disqualification

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- Certain situations arise where a judge is legally disqualified from presiding over a case
- The judge's relationship to some of the parties involved or the kind of case may cast doubt upon the judge's ability to rule fairly

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# Recusal and DQ - examples

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- The judge knows they will financially benefit from the outcome
- One of the parties is related to them - like a spouse or a child (see chart in [Officeholding and Ethics Deskbook](#))
- Personal bias about the subject matter or a party,
- Personal knowledge of facts concerning the proceeding

Texas Constitution Art. 5, § 11; Government Code §21.005 & Texas Rules of Civil Procedure 18(b)(1) (a)-(c)

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# Recusal – How to File

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Rule 18a governs the procedure for recusing a judge sitting in any trial court **other than a justice court**

Justice Courts use Rule 502.4(d) ‘Unfair Trial’

Comment to 2011 Change of Texas Rules of Civil Procedure Rule 18a

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# Recusal – Best Practice

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What if you don't have to recuse, but you do know a party?

Maybe it's a service you use regularly

Maybe it's a personal friend

1. Notify both parties in writing
2. If true, explain you will be impartial (fair)
3. Give them a chance to request a different judge
4. If requested, ask another judge to sit for you

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## What if a judge is recused?

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The nearest justice in the county may temporarily perform the duties of the office.

A judge may also “exchange benches” with any other JP in the state (covered more coming up!).

Government Code Sec. 27.052, 27.054

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## What if a judge has a short-term absence?

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- If a justice of the peace is **disqualified from a civil case, is sick, or is absent from the precinct**, the parties may agree on a person to try the case.
- If the parties fail to agree and one of the parties or the JP asks, the county judge shall appoint a qualified person to try the case.

Government Code Sec. 27.055 (a)

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## What if the judge has a long-term absence?

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- If a justice is temporarily unable to perform official duties because of **absence, recusal, illness, injury, or other disability**, the county judge may appoint a qualified person to serve as temporary justice for the rest of the time needed.
- The commissioners court will pay the temporary justice by the day, week, or month equal to the pay of the regular justice.
- A temporary justice has all the rights and powers of the justice of the peace while serving in that capacity but may not make personnel decisions about, or significant changes in the justice of the peace's office

Government Code Sec. 27.055 (b)

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## What if the judge has a long-term absence?

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- “Qualified person” means a person who has served as a justice of the peace for not less than 4 1/2 years and who has not been convicted of a criminal offense that involves moral turpitude.
- The person may live outside the county.
- If the judge cannot find a “qualified person” who agrees to serve, they may appoint any “qualified voter”

Government Code Sec. 27.055 (c) – (f); Section 11.002, Election Code

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## What if a judge retires, resigns, or dies in office?

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A vacancy in the office of justice of the peace is filled by the commissioners court by majority vote and the person appointed will serve until the next general election.

Texas Constitution Art.5 §28; Local Government Code §87.041.

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## When a judges is on vacation, at a conferences, or just to make sure that someone is always 'on-call' for judicial duty

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Exchange of Benches

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# Exchange of Benches

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A justice of the peace may hold court for any other justice in any county at the request of that justice.

The justices of any county may exchange benches for a period not to exceed 5 days

A justice who exchanges benches is not entitled to receive compensation from the commissioners court

Government Code Sec. 27.054

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# Who has the burden of proof in a criminal case?

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# Legal Advice: Do Not Give It!

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## Legal Advice

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Why not to provide it

The difference between giving legal information and legal advice

What to do instead

96

# Why not?

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It is not fair to help one side without helping the other

The litigant can 'blame' the court if they lose

Code of Judicial Conduct requires the court to remain neutral

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# What is Legal Advice?

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“When a person asks whether or not they should proceed in a certain fashion. Telling a member of the public what to do rather than how to do it may be giving legal advice.

Legal advice is a written or verbal statement that:

- Interprets some aspect of the law, court rules, or court procedures;
- Recommends a specific course of conduct a person should take in an actual or potential legal proceeding; or
- Applies the law to the individual person’s specific factual circumstances.”

*Legal Information vs. Legal Advice: Guidelines and Instructions for Clerks and Court Personnel Who Work with Self-Represented Litigants in Texas State Courts*; online manual from Texas Office of Court Administration Texas Access to Justice Commission Texas Access to Justice Foundation Texas Legal Services Center

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## What is Legal Information?

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- “Provide public information contained in dockets, calendars, case files, indexes, and other reports.
- Recite common, routinely-employed court rules, court procedures, administrative practices, and local rules, and explain generally how the court and judges function.
- Refer self-represented litigants to a law library or the court’s website for statutes, court rules, or forms.
- Explain the meaning of terms and documents used in the court process.
- Answer questions concerning deadlines or due dates (without calculating due dates).
- Identify and refer self-represented litigants to court forms.”

*Legal Information vs. Legal Advice: Guidelines and Instructions for Clerks and Court Personnel Who Work with Self-Represented Litigants in Texas State Courts*; online manual from Texas Office of Court Administration Texas Access to Justice Commission Texas Access to Justice Foundation Texas Legal Services Center

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## Policy against providing legal advice

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Applies to your staff, too!!

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# Advice v Info – Examples

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## ADVICE

Telling someone what kind of case to file

Suggesting how to recover on a judgment

Informing defendant that they have a defense

## INFORMATION

Making the exact same statement to the exact type of litigant every time

Civil Information ‘Packets’

Asking for clarification on an option

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# Know your resources!

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Forms

Information packets for each type of case and both sides

Legal website for your county and for the state

Local Law library

Constable's Office

Legal Aid contact information

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